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Indiana Utility Regulatory Commission

April 6, 2018

Mary Becerra
Secretary of the Commission
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500 E
Indianapolis, Indiana 46204
mbecerra@urc.in.gov
Electronically delivered

RE: Reply to IPL's Response to CAC and ELPC Objection

Reply to IPL's Response to Objection on behalf of
Citizens Action Coalition and the Environmental Law & Policy Center

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with Indianapolis Power & Light's ("IPL") Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns IPL's 30-day filing, filed on February 28, 2018, IURC 30-Day Filing No. 50123.

IPL's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny IPL's 30-day filing and open an investigation into Indiana's PURPA implementation.

1. **IPL's Standard Contract Fails to Comply with Indiana and Federal Law.**

After ELPC and CAC filed its Objection, IPL's counsel provided its standard contract to ELPC and CAC, which attached to this reply as Exhibit C. There are three relevant requirements applicable to IPL's standard contract. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana's PURPA regulations require electric utilities to file a standard contract that must include "[t]he term of the contract." 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, _ F. Supp. 3d. _, No. 13-04934, 2017 WL 6040012, at *10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

IPL's standard contract fails to contain a term length, as required by 170 IAC 4-4.1-11(c)(1), and failure to provide a term length also fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In IPL's standard contract,

the term length is undefined. *See* Exhibit C at 5. By leaving the term undefined, IPL fails to comply with Indiana law requiring "the term of the contract," 170 IAC 4-4.1-11(c)(1), and fails to provide a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). Although the term contains an evergreen provision, the lack of a defined term fails to provide a QF with any meaningful opportunity to fix rates over a term certain. It is impossible to fix rates over a specified term when that term is indefinite.

In IPL's standard contract, the rates for purchase change annually, which means avoided cost rates are not fixed if the contract is longer than one year. *See* Exhibit C at 4. Nowhere else in the standard contract is there an option for fixed rates in contracts longer than a year, as required by 18 C.F.R. § 292.304(d)(2)(ii).

IPL's standard contract's annual change to the avoided cost conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which requires QFs to have the option of fixing the contract price for the delivery of energy and capacity "at the time the obligation is incurred." *See Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff'd* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state's PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, _ F. Supp. 3d. _, No. 13-04934, 2017 WL 6040012, at *10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission ("NCUC") recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.[1] The NCUC explained:

> The Commission determines, for purposes of this case, that IPL's proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.[2]

Annual avoided cost updates, like those in IPL's standard contract, would be even more uncertain than Duke Energy Carolina's unsuccessful biennial update proposal in North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

> Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they would a two-year contract, which would not be financeable. Cypress Creek

[1] *See In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm'n Oct. 11, 2017) *available at* https://perma.cc/UUJ6-2G5Q.
[2] *Id*., Order at 69.

> witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that "fixed rates for a fixed period of time create financeable contracts," and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.[3]

IPL's failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders.In addition, the lack of fixed rate contracts and its negative effect on QF development is an issue the Commission should investigate further, and the Commission should require IPL to offer QFs the ability to fix rates over an entire term, as required by PURPA.

2. IPL Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).

In its response, IPL admitted that it has not filed *all* of the information required by 18 C.F.R. § 292.302(b). IPL Response at 3 ("IPL has complied with *many* of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ('IRP') which was filed on November 1, 2016.") (emphasis added). IPL's response indicates it has only supplied the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs), but did not indicate it has supplied the forecasted avoided cost information required by 18 C.F.R. § 292.302(b)(1). Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, IPL is not in compliance because it has not filed the information required by § 292.302(b)(1) in the last two years.

In addition, although IPL's November 2016 IRP does show its planned capacity additions over the next ten years,[4] as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the "estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour." 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities "shall maintain for public inspection" these "estimated capacity costs." 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The "public inspection" requirement preempts application of trade secret or confidential treatment of the information required to comply with this regulation.[5] If IPL wants to use its IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs

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[3] *Id*., Order at 67.

[4] IPL, 2016 INTEGRATED RESOURCE PLAN at 209 (Nov. 2016), *available at* https://perma.cc/NS83-AR8M.

[5] *See In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at *13-14 (Jan. 27, 1995 Me. Pub. Util. Comm'n). The Maine Public Utilities Commission stated:

> Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law. *Id*. at *13.

from public view.

IPL's lack of compliance with 18 C.F.R. § 292.302(b)(1) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.

IPL believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. IPL Response at 4-5. However, contrary to IPL's assertions, there are no active FERC investigations or rulemakings related to PURPA. IPL cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.[6] Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

IPL misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit D. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit E. Nevertheless, IPL attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," IPL Response at 3, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

IPL also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.[7] Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

IPL's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted state laws and regulations to implement these requirements, including a state law that directs the commission to

[6] *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at https://perma.cc/TKU5-CBW9; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at https://perma.cc/A9TV-DLZW.

[7] *See* https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions

require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

Indiana should use its considerable discretion under PURPA to deny approval of IPL's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

Dated April 6, 2018

Respectfully submitted,

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(317) 735-7764
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Jeffrey Hammons
Staff Attorney
Environmental Law & Policy Center
Chicago, IL 60601
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IPL STANDARD FORM
AGREEMENT FOR PURCHASE
OF CAPACITY AND/OR ENERGY FROM COGENERATION
OR SMALL POWER PRODUCTION FACILITY

THIS AGREEMENT, made as of the _____ day of _____, 19___, by and between _____ (herein called "Seller") and INDIANAPOLIS POWER & LIGHT COMPANY, an Indiana corporation (herein called "IPL"),

WITNESSETH, That:

The parties hereto agree as follows:

Preliminary Provisions

1. Seller warrants to IPL that Seller is a qualifying facility under Indiana law and, in addition, that Seller is either a federally qualified facility under 18 CFR, Part 292, Subpart B, or it has all requisite authority and approvals from the Federal Energy Regulatory Commission ("FERC") for interconnection with and sales of electric power and energy to IPL. Seller agrees to keep such certification or authority and approvals in full force and effect and to provide IPL copies of all documentation thereon on request.

2. This Agreement and all action to be taken hereunder is and shall be subject to all the terms and conditions of IPL's Rate CGS (Cogeneration & Small Power Production) in its Rates, Rules and Regulations for Electric Service, P.S.C.I. No. E-15, and the related Standard Contract Riders appertaining thereto and referred to therein, as the same may be revised, amended or supplemented from time to time, or any replacement thereof, all of which are incorporated herein and made a part of this Agreement by this reference.

3. Seller's Facility ("Facility") from which it will serve IPL hereunder consists of:

and has a name plate rate of _____ KW. Its primary energy source is _____. The Facility is located at

Seller intends to sell the (net energy output) (surplus energy output) [strike out inapplicable phrase] from the Facility and to make available to IPL _____ KW of capacity and up to _____ KWH of energy per month.

IPL Warranty

4. It is understood and agreed that the only warranties made by IPL hereby with respect to any interconnection facilities constructed, designed or required by it are those which may be made by third parties supplying materials or services. IPL MAKES NO WARRANTY OF DESIGN, MATERIAL, WORKMANSHIP, QUALITY OR OTHERWISE, WHETHER EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE INTERCONNECTION FACILITIES, THE INSTALLATION AND CONSTRUCTION THEREOF, OR ANY MATERIALS OR SERVICES PROVIDED BY IPL OR ANY CONTRACTOR IN CONNECTION WITH SUCH INSTALLATION AND CONSTRUCTION.

Purchases

5. Seller shall sell and deliver and IPL shall purchase and accept from the Facility capacity and energy at the voltage level

of _____ KV or any other level agreed to in writing by IPL. Seller shall limit its actual rate of delivery into the IPL system to _____ KW.

6. Seller estimates that deliveries shall commence on _____ _____,19___. Seller shall promptly give IPL written notice of any expected change in such date and promptly after the end of each calendar quarter from the date of this Agreement to the date of actual service commencement Seller shall give IPL written confirmation of the expected service commencement date.

7. If Seller does not complete construction of the Facility by _____ _____, 19___, IPL may reallocate to other uses the existing capacity of IPL's transmission and/or distribution system which would have been used to accommodate Seller's power deliveries. In the event of such reallocation, Seller shall pay IPL the cost of any upgrading or addition to IPL's system to accommodate the output from the Facility. Such upgrades and additions shall be installed, owned and maintained by IPL.

Purchase Price

8. IPL shall pay Seller for the capacity provided and energy delivered at the rates set forth in IPL's Rate CGS as filed with and approved by the Indiana Utility Regulatory Commission (the "Commission") from time to time or any replacement thereof.

Term

9. Subject to the provisions of paragraphs 10 and 11 herein, this Agreement shall continue in effect until terminated by Seller on 90 days' advance written notice to IPL.

10. IPL makes this Agreement pursuant to the requirement of an Order of the Commission entered on October 5, 1984, in Cause No. 37494, as thereafter amended, and the Commission's rules and regulations with respect to cogeneration and alternate energy production facilities, 170 IAC 4-4.1, approved by said Order, and its obligations herein continue in effect so long as said rules and regulations, or a replacement thereof, remain in effect. This Agreement and IPL's obligations hereunder shall terminate if and when said rules and regulations are held to be invalid or suspended or withdrawn or cease being effective for any other reason.

11. Anything in this Agreement to the contrary notwithstanding, should IPL at any time during the term of this Agreement fail to obtain or be denied the Commission's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over IPL's rates and charges, to recover from its customers all the payments required to be made to Seller under the terms of this Agreement or any subsequent amendment to this Agreement, the parties agree that, at IPL's option, they shall renegotiate this Agreement or any applicable amendment. If IPL

exercises such option to renegotiate, IPL shall not thereafter be required to make such payments to the extent IPL's authorization to recover them from its customers is not obtained or is denied. It is the intent of the parties that IPL's payment obligations under this Agreement or any amendment hereto are conditioned upon IPL being fully reimbursed for such payments through its authorized rates or charges. Any amounts initially recovered by IPL from its rate payers but for which recovery is subsequently disallowed by the Commission and charged back to IPL may be set off or credited against subsequent payments made by IPL for purchases from Seller, or alternatively, shall be repaid by Seller.

Mandatory Provision

12. Each party shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification under this provision, the other party shall defend any suit asserting a claim covered by this provision.

If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action.

13. If either party is rendered wholly or partly unable to perform its obligations because of Force Majeure, both parties shall be excused from whatever obligations are affected by the Force Majeure and shall not be liable or responsible for any delay in he performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

"Force Majeure" means any cause or event not reasonably within the control of the party claiming Force Majeure, including, but not limited to, the following: acts of God, strikes,lockouts or other

industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or quarantine.

14. The parties agree that the amount of the capacity payment which IPL is to make to Seller is based on the agreed value to IPL of Seller's performance of it obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event IPL does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by Seller as specified in this Agreement (1) IPL shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the

actual damages to IPL resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

15. In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, Seller shall refund to IPL the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to IPL.

16. Except in the event of Force Majeure as defined in this Agreement, if, within any twelve months' period during the term of this Agreement ending on the anniversary date of the date Seller first provided capacity to IPL under this Agreement, Seller fails to provide IPL with the capacity specified in this Agreement, the capacity for which Seller shall be entitled to capacity payments during the subsequent twelve months' period (the "Probationary Period") shall be reduced to the capacity provided during the twelve months' period. If, during the Probationary Period, Seller provides

the capacity specified in this Agreement, IPL within 30 days following the end of the Probationary Period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the Probationary Period, Seller again fails to provide the capacity specified in this Agreement, IPL may permanently reduce the capacity purchased from Seller for the remainder of the term of this Agreement. IPL may also require that the reduction in the capacity be subject to the refund provisions of paragraph 14 above.

Insurance

17. So long as this Agreement remains in effect, Seller agrees to maintain in force insurance policies with comprehensive general liability coverage, with IPL named as an additional insured party, having a policy limit of not less than $2,000,000 each occurrence if Seller operates a generating facility of 100 KW or more, and not less than $1,000,000 for each occurrence if seller operates a generating facility of less than 100 KW. The insurance carrier or carriers and form of policy shall be subject to IPL's review and approval.

Right to Refuse Performance

18. In event of any breach of warranty or agreement by either party hereto or of any failure to meet the conditions of IPL's Rate CGS or any replacement thereof, the other party may refuse performance hereunder until such breach or failure is cured.

Other Provisions

19. Special provisions on various matters such as (but not limited to) coordination of scheduled outages, application of demand charges payable to IPL in event of breakdown or emergency shutdown of Seller's equipment, wheeling, etc., may be set forth in the supplement annexed hereto and any such additional provisions are made a part of this Agreement.

20. Wheeling is available to the Seller under the provisions of 170 I.A.C. 4-4.1-6 to the extent that such provisions are applicable in view of the Federal Power Act jurisdiction of the Federal Energy Regulatory Commission over IPL's transmission operations.

21. This Agreement embodies the entire agreement of the parties and supersedes all other discussions, understandings or agreements relating to the subject matter hereof.

22. This Agreement shall be effective from and after the date it is approved by the Indiana Utility Regulatory Commission.

23. All written notices shall be directed as follows:

To Seller:

To IPL: William H. Henley
Manager, Rates and Regulations
Indianapolis Power & Light Company
Post Office Box 1595
Indianapolis, Indiana 46206-1595

or to such other name and address as a party shall furnish to the other party in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the month and year first above written.

_____

By_____

_____

Seller

INDIANAPOLIS POWER & LIGHT COMPANY

By_____

_____

IPL

AD 16-16

Congress of the United States
Washington, DC 20515

October 30, 2017

The Honorable Neil Chatterjee
Chairman
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.

2017-00119

As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

Sincerely,

Tim Walberg
Member of Congress

Fred Upton
Member of Congress

Joe Barton
Member of Congress

Marsha Blackburn
Member of Congress

Robert E. Latta
Member of Congress

Gregg Harper
Member of Congress

David B. McKinley, P.E.
Member of Congress

H. Morgan Griffith
Member of Congress

Bill Johnson
Member of Congress

Dave Loebsack
Member of Congress

Larry Bucshon, M.D.
Member of Congress

Bill Flores
Member of Congress

Markwayne Mullin
Member of Congress

Kevin Cramer
Member of Congress

Kurt Schrader
Member of Congress

Billy Long
Member of Congress

Richard Hudson
Member of Congress

Document Content(s)

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

November 29, 2017

OFFICE OF THE CHAIRMAN

The Honorable Tim Walberg
U. S. House of Representatives
Washington, *D.C. 20515*

Dear Congressman Walberg:

Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,

Neil Chatterjee
Chairman

Document Content(s)

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